

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAKEEM RASHAUD ROBINSON,

Defendant-Appellant.

UNPUBLISHED

June 13, 2013

No. 310145

Wayne Circuit Court

LC No. 11-012911-FH

Before: RIORDAN, P.J., and TALBOT and FORT HOOD, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of carrying a concealed weapon (CCW), MCL 750.227, possession of less than 25 grams of heroin, MCL 333.7403(2)(a)(v), possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to two years' imprisonment for the felony-firearm conviction and four years' probation for the remaining convictions.¹ Defendant appeals by right. We affirm.

Defendant argues that the evidence at trial was insufficient to prove beyond a reasonable doubt that he, rather than his acquaintance, was the person observed discarding two firearms. We disagree. In analyzing a challenge to the sufficiency of the evidence, the appellate court reviews the evidence in the light most favorable to the prosecutor to determine whether the trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012). "All conflicts in the evidence must be resolved in favor of the prosecution and we will not interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

In contesting the officers' observational abilities, defendant is essentially challenging the prosecution's proof of identity. The prosecution must prove the identity of the defendant as the

¹ The first nine months of the probationary sentence was to be served in jail following the completion of the two-year incarceration for felony-firearm. Defendant does not challenge his sentences on appeal.

perpetrator of a charged offense beyond a reasonable doubt. *People v Kern*, 6 Mich App 406, 409; 149 NW2d 216 (1967); see also *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). A positive identification by a witness or circumstantial evidence and reasonable inferences arising from it may be sufficient to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000); *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). The trier of fact determines the credibility of identification testimony, and on appeal, the issue is not resolved anew. *Davis*, 241 Mich App at 700; *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

At trial, officers Bryant and Criner both identified defendant as the person they saw remove two guns from his jacket pockets before discarding the weapons. Their testimony is sufficient to support defendant's weapons convictions. Defendant testified that he possessed the drugs, but denied the possession of the weapons. In closing argument, the defense attacked the available lighting and the distance between the observations by officers and defendant's location. Nonetheless, the jury convicted defendant as charged. The credibility of the conflicting testimony was for the jury to resolve, and this Court will not resolve it anew. *Daniels*, 172 Mich App at 378. "Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992) amended 441 Mich 1201 (1992), quoting *People v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974).

Defendant next argues that trial counsel was ineffective for failing to seek an order for fingerprint testing of the firearms. We disagree. Because defendant did not move for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436, 442-443; 212 NW2d 922 (1973), this Court's review of this issue is limited to errors apparent on the record. *People v Williams*, 223 Mich App 409, 414; 566 NW2d 649 (1997). "Whether a defendant received ineffective assistance of trial counsel presents a mixed question of fact and constitutional law." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011) (footnote omitted).

A defendant must meet two requirements to warrant a new trial because of the ineffective assistance of trial counsel. First, the defendant must show that counsel's performance fell below an objective standard of reasonableness. In doing so, the defendant must overcome the strong presumption that counsel's assistance constituted sound trial strategy. Second, the defendant must show that, but for counsel's deficient performance, a different result would have been reasonably probable. [*Id.* at 289-290 (footnotes omitted).]

A defendant must establish the factual predicate for his claim that counsel was ineffective. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Defense counsel's questioning and arguments at trial suggest that he was not aware of any fingerprint testing. Although the record does not contain any request by counsel for fingerprint testing or any other discovery related to the firearms, the record is inadequate to overcome the presumption that the decision not to pursue fingerprint testing was strategic. Therefore, defendant has not shown that counsel's performance fell below an objective standard of reasonableness.

Moreover, defendant has not established the factual predicate for the prejudice prong of his claim. *Armstrong*, 490 Mich at 289-290; *Hoag*, 460 Mich at 6. The record indicates that

fingerprint testing was in fact conducted. The report of that testing states that the firearms were processed “with no latent prints of comparison value being developed.” Because fingerprint testing was conducted and that evidence was shown to have no exculpatory value, there is no reasonable probability that the result of the proceeding would have been different had counsel pursued the matter before trial. *People v Marshall*, 298 Mich App 607, 618; ___ NW2d ___ (2012), vacated in part on other grounds ___ Mich ___ (2013). For these reasons, defendant has not shown that counsel was ineffective for failing to pursue fingerprint testing.

Affirmed.

/s/ Michael J. Riordan
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood